IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.3375 OF 1997 WITH FIRST APPEALS NOS. 3376 TO 3790 OF 1997
with

Civil Application No. 11452 of 1997 to Civil Application No.11467 of 1997.
with
Civil Application No.8277 of 1998 to Civil Application No.8290 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 6 : No.

SARKAR

Versus

PREMJI DEVJIBHAI

Appearance:

First Appeals Nos. 3375 of 1997 to 3382 of 1997
Mr. S.N. Shelat, Additional Advocate General with Mr. P.G. Desai, Government Pleader, for the appellants.
Mr.P.M. Thakker for M/s.Thakkar Associates for the respondents.

First Appeals Nos. 3383 of 1997 to 3390 of 1997
Mr. S.N. Shelat, Additional Advocate General with Mr. U.A. Trivedi, Additional,Government Pleader, for the appellants.

Mr.P.M. Thakker for M/s.Thakkar Associates for the respondents.

Civil Applications Nos. 11452 of 1997 to Civil Applications Nos.11467 of 1997.

Mr. U.A. Trivedi, AGP, for the applicants
Mr.P.M. Thakker for M/s.Thakkar Associates for the respondents.

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 18/11/98

COMMON ORAL JUDGMENT : (Per: Panchal, J.)

1. All these appeals, which have been filed by the State of Gujarat and others under Section 54 of the Land Acquisition Act, 1894, ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated May 9, 1997, rendered by the learned District Judge, Amreli, in Land Reference Cases Nos. 54 of 1989 to 69 of 1989 respectively and, therefore, we propose to dispose of all these appeals by this common judgment.

2. The State Government was satisfied that the lands situated at village Vadia were likely to be needed for public purpose, i.e. Vadia Irrigation Scheme. Preliminary enquiry was held and joint measurement of the lands to be acquired was made on January 28,1987. Thereafter, possession of the lands to be acquired was handed over to the State Government on March 5, 1987. The State Government published notification under Section 4 of the Act on July 9, 1987, whereas declaration under Section 6 of the Act was made on January 12,1988 after receipt of report under Section 5(A)(2) of the Act. Interested persons were thereafter served with notices under Section 9 of the Act for determination of compensation to be paid to them. The interested persons appeared before the Land Acquisition Officer and without claiming any specific amount of compensation requested the Land Acquisition Officer to award compensation at a higher rate. In view of the materials placed before him, the Land Acquisition Officer, by award dated March 8, 1989, offered compensation at the rate of Rs.300 per Are for the irrigated lands and Rs.200/- per Are for the non-irrigated lands. He also offered Rs.1 per Are for the waste land. The claimants were dissatisfied by the

offer of the the Land Acquisition Officer. Therefore, they sought references and, accordingly, the references were made by the Land Acquisition Officer to the District Court, Amreli, at Amreli. Those references were numbered as Land Reference Cases No. 54 of 1989 to 69 of 1989. In the reference applications, it was pleaded by the claimants that the lands acquired had potentiality of being used either for building purpose or for commercial purpose and, therefore, the offer, which was made by the Land Acquisition Officer was inadequate. It was claimed that, as the lands situated in the nearby area were sold at higher rate, they were entitled to higher compensation. It was stressed by them that the acquired lands were very fertile and the yield being very rich, they should have been awarded compensation at much higher rate. By filing reference applications, the claimants claimed compensation at the rate of Rs.1200/per Are.

3. The reference applications were contested by the State Government and others. In the reply, it was pleaded by the State Government that, since the claimants had not led any evidence before the Land Acquisition Officer in support of their claim regarding higher compensation, the reference applications were liable to be rejected. What was highlighted therein was that the offer which was made by the Land Acquisition Officer was just and adequate in view of the materials placed before him and, therefore, the references made to the Court should be rejected. The learned Assistant Judge, Amreli, who heard the Land Reference Cases, decided them on different dates. The learned Judge, first of all, decided Land Reference Case No.69/89 from which First Appeal No.1885 of 1995 was filed in the High Court. Relying on that very judgment, the learned Judge decided the subsequent Land Reference Cases. The learned Judge adopted the method of sale instances for determining the market value of the lands. However, he lost the sight of the fact that the documents Exh.14 and 15 relied upon by him were not proved nor brought on record in the manner required by Section 68 of the Indian Evidence Act. Those documents were referred to in the deposition of one of the claimants, i.e. Mr. Premji Devji, who was examined at Exh.13 and though the said documents were produced by the witness at Marks 10/3 and 10/4 they were not exhibited during the course of examination in chief of the said witness. The learned Judge awarded compensation at the rate of Rs.900/- per Are for the irrigated lands and Rs.600/- per Are for the non-irrigated lands by judgment and award dated October 7, 1994.

4. Feeling aggrieved by the said award, the State

Government preferred First Appeals Nos.1885 of 1995 to 1900 of 1995 in the High Court. Neither cross objections were filed by the claimants in these appeals nor cross appeals were filed by the claimants against the judgment and award dated October 7, 1994 rendered by the learned Assistant Judge. The Division Bench (Coram:N.J.Pandya & S.K. Keshote, JJ.) which heard the appeals noted that the documents Exh.14 and 15 relied upon by the claimants were not proved as required by the provisions of Indian Evidence Act, nor the contents thereof were admitted by the State. Another infirmity in the judgment of the Reference Court which was noticed was that the reference court had divided the trees into two categories, namely, fruit bearing and non-fruit bearing trees and though the method of sale instance was adopted with regard to fruit bearing trees for ascertaining the market value of the lands acquired, the Reference Court had proceeded to offer the worth of yield on annual basis and capitalized the same. The High Court was, therefore, of the opinion that the matters deserved to be remanded. In view of this conclusion, the Division Bench remanded all the references to the Reference Court by judgment dated October 13, 1995 and made the following observations in paragraph 10 of the judgment.

"10. In our opinion, when documents Exhs. 15 and 16 mark 10/3 & 10/4 are held by us not to have been properly exhibited, opportunity is required to be given to the claimants to prove these documents and hence, the matters are going back to the trial Court where the parties are at liberty to produce documentary evidence and thereafter to lead evidence in support thereof. In that view of the matter, the claimants will also have a right to adduce evidence in support of the documents at marks 10/3 & 10/4 as well as other documents that they might chose to produce in response to the additional evidence which the State wants to produce and accordingly the case may be taken from the stage of recording of evidence after issues are framed. In the circumstances, both the parties are at liberty to examine their respective witnesses. In view of the fact that the matters are very old, the Reference Court shall give top priority to the cases and parties to the References shall also co-operate and shall see that the matters are disposed of as early as possible. In any case, the reference Court shall decide the matter on or before 31st January 1996. With a view to save further time on service of notice, the parties are directed to appear before the Reference Court on 15th of November 1995 and get the date fixed for proceeding with the matter further. The office is

directed to send the original record to the trial court so that the said dead-line can be met with by both the sides. The awards of the Reference Court in all these matters are set aside. The appeals stand allowed accordingly. The matters stand remanded to the Reference Court and it shall decide the same keeping in mind the observations made hereinabove and in accordance with the evidence produced before it and of course in accordance with law. There shall be no order as to costs. The Civil Applications are also disposed of accordingly."

5. On remand. the claimants examined witness Mansukhbhai Mohanbhai at Exh.123. He produced sale deed at Exh.124 executed with reference to Survey No.238/1 of village Vadia on January 22, 1979. The rate reflected in the deed was Rs.709.96 per Are. Another witness examined by the claimants, i.e, Purshottambhai Devji, produced sale deed Exh.39 relating to Survey No.339 of village Vadia on March 12,1987, wherein, the price reflected was Rs.710 per Are. The claimants also led evidence regarding income derived from fruit bearing trees and claimed compensation on yield basis in Land Reference Cases Nos. 59/89, 62/89 and 65/89.

6. On behalf of the State Government, sale instances at Exh.77, Exh.131, Exh.137 were produced. Exh.77 related to sale of Survey No.43 of village Vadia on January 16, 1987. It showed that the land admeasuring 1 Hectare 17 Are 36 Sq.mtr was sold at the rate of Rs.204.50 per Are. It may be mentioned that the sale deed was proved by witness, Babubhai Ranchhodbhai, who was examined at Exh.134. Another witness Chhaganbhai Mohanbhai examined at Exh.128 proved sale of Survey No.347 and 343/2 of village Vadia on October 6, 1986. The said sale instance showed that 90 Are 68 Sq.mtrs of land was sold at the rate of Rs.269.57 ps per Are. Another witness Dhirubhai examined at Exh.129 proved sale of Survey No.10 of village Vadia on March 25, 1983 and produced sale deed at Exh.131. That sale deed indicated that the lands admeasuring 80.94 Are were sold at the rate of Rs.185.32 ps per Are. On behalf of the State Government, witness Vithalbhai Ranchhodbhai was also examined at Exh.135 who produced deed dated December 12,1985 at Exh.137 regarding sale of Survey No.166 of village Morwada. The said deed reflected that the lands admeasuring 60.70 Are were sold at the rate of Rs.181.22 ps per Are.

7. On consideration of the evidence led by the parties, the Reference Court has awarded compensation

at the rate of Rs.1125 per Are for the irrigated lands and Rs.825 per Are for the non-irrigated lands. In the three Land Reference Cases i.e. Land Reference Cases Nos. 59/89, 62/89, and 65/89, the Reference Court determined compensation payable to the claimants on yield basis and has awarded Rs.54,58,800/-, Rs.27/04,000/-, and Rs.28,92,000/- respectively, by judgment and award dated May 9, 1997, giving rise to the present appeals.

8. Mr. S.N.Shelat, learned Additional Advocate General, appearing with Mr.Prashant G. Desai, learned Government Pleader, and Mr. U.A. Trivedi, learned Assistant Government Pleader, submitted that method of capitalising the actual, or immediately prospective, profits or rent of number of years' purchase should not have been resorted to by the Reference Court for the purpose of ascertaining market value of the lands in three cases only when evidence of comparable sales of lands is not only on the record but taken into consideration with respect to other lands and, therefore, the impugned award should be set aside. It was claimed that the method of ascertaining the market value of the lands acquired on the date of notification under Section 4(1) of the Act on yield basis should not have been resorted to when the sale instances were available for the purpose of ascertaining the market value of the lands acquired. It was pleaded that the Reference Court erred in law in relying upon the sale instances relating to Survey Nos. 238/1 and 339 of village Vadia for ascertaining the market value of the lands acquired in as much as these sale instances related to small area and it was established that as they were of great advantage to the purchasers, a special price was paid by the purchasers. It was brought to the notice of the Court that, during initiation of the proceedings for acquisition of the lands in question, the abovereferred to sales had taken place and, therefore, without making proper deduction, those instances should not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired. What was stressed was that the sale instances relied upon by the Government and produced at Exh.77, Exh.73, Exh.131, and Exh.137, were not only proximate in point of time, but were also comparable and, therefore, the compensation payable to the claimants ought to have been determined with reference to those sale instances. The learned Government Counsel emphasized that Exh.24, which is certified copy of the extract prepared by the Gujarat Agricultural University in respect of price of various products should not have been received in evidence because no one was examined to prove the contents of the

same and it is not a public document of which judicial notice can be taken by the court under the provisions of Sections 74 to 78 of the Indian Evidence Act. On behalf of the appellants, it was argued that even if formal production of the said document was permissible, it ought not to have been relied upon by the Reference Court, as the contents of Exh.24 were not proved. In the alternative, it was submitted that Exh.24 was not useful for the purpose of determination of value of the trees and should have been ignored by the Reference Court. What was asserted was that while remanding the matters to the Reference Court, the High Court had given certain directions in First Appeals Nos. 1885/95 to 1900/95 and, as those directions were ignored by the Reference Court, the appeals filed by the State Government should be allowed.

9. Mr. P.M. Thakker, learned Senior Advocate, appearing for the respondents in these appeals, submitted that the Reference Court has not committed any error in adopting yield method for the purpose of determining compensation in three cases and when the market value of the lands which may be found on the basis of sale instances is not added to the value of lands determined by resorting to yield method, the appeals should be dismissed. On behalf of the claimants, it was claimed that the sale instances relating to Survey Nos. 238/1 and 339 of village Vadia are not only proximate in time but are also comparable and the Reference Court having rightly determined the market value of the lands acquired on the basis of two sale instances, the appeals should be dismissed. What was highlighted was that the sale instances relied upon by the State Government do not furnish guidance for fixing market value of the lands acquired and, therefore, the award rendered by the Reference Court should be upheld.

10 In view of the controversy raised in the appeals, the question which falls for the consideration of the Court is whether the reference Court was justified in adopting the method of capitalising the actual or immediately prospective profits or rent of number of years' purchase for the purpose of ascertaining the market value of the lands in three cases and relying on the sale instances for determining value of lands in other cases. There is nothing secret or mysterious about the value of land. It is a commodity commonly dealt in and like every other commodity it has price which can be ascertained within certain limits. This price, however,

constantly varies according to the variations of the supply and demand and it is impossible to fix it at any given time with mathematical accuracy. Valuation of immovable property is not an exact science. A determination of the value is an enquiry relating to a subject abounding in uncertainties, where, there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons for the conclusions arrived at. It has been observed that in all valuation, judicial or otherwise there must be room for inference and inclination of opinions which being more or less conjectural are difficult to reduce to exact reasoning or to explain to other, and it is unfair to require an exact exposition of reasons for the conclusions arrived at. However, the recognised methods of valuation of land acquired under the Act may be classified under three heads: (1) the price paid, within a reasonable time, in bona fide transactions of purchase of the lands acquired, or of the lands adjacent to the land acquired and possessing similar advantages; (2) a number of years, purchase of the actual, or immediately prospective, profit from the lands acquired; (3) the opinion of valuators or experts. If a part or parts of the land taken up has or have been previously sold such sales are taken as a fair basis upon which, making all proper allowances for situation, etc., to determine the value of that taken. Normally, method of capitalizing the actual or immediately prospective profits or rent of a number of years' purchase is not resorted to if there is evidence of comparable sales or other evidence for computation of market value. If the evidence of comparable sales or other evidence for computation of the market value is not available, value of the land can be determined with reference to the net annual income of the land and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property. However, when it is possible to find out the prices at which the lands in the vicinity have been sold and purchased, and to determine the market value of the lands acquired after making due allowance for situation, the yield method is not resorted to. In the case of State of Gujarat vs. Vakhatsinghji Vaghela (dead) his legal representatives and others, AIR 1968 Supreme Court 1481, the Constitution Bench of the Apex Court has held that the market value is the amount which the land if sold in the open market by a willing seller might be expected to realise. It is observed therein that in the case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantages. What is emphasized by the Supreme Court is that where there are

no sales of comparable lands, the value must be found in some other way and one method is to take annual income which the owner is expected to obtain from the land and to capitalise it by a number of years' purchase. The law propounded by the Supreme Court makes it clear that in case of lands the market value should be ascertained on a consideration of price obtained by sale of adjacent lands with similar advantages and where there are no sales of comparable lands the value should be found by resorting to yield method and not otherwise. In Special Land Acquisition Officer, Davangera vs. P. Veerabhadarappa, AIR 1984 Supreme Court 774, the Supreme Court considered advisability of adopting method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase for the purpose of ascertaining the market value of the land on the date of notification under Section 4(1) of the Act and has held that the said method can be resorted to only when no other method is available. The pertinent observations made by the Supreme Court in the said case are as under:

"7. The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of notification under Section 4(1) of the Act and the methods of valuation may be : (i) Opinion of experts, (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages. And (3) A number of years purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available.

8. It is axiomatic that the best evidence to prove that a willing purchaser would pay for the land under acquisition would be the evidence of sale of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite shape of sales of similar lands in the neighbourhood at or about the date of notification under S.4(1) or otherwise, the Court has no other alternative but to fall back on the method of valuation by

capitalization. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in money investments. The return which an investor will expect from an investment will depend upon the characteristic of income as compared to that of idle security. The main features are: (1) Security of the income: (2) fluctuation: (3) chances of increase: (4) cost of collection etc. The most difficult and yet the most important and crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property.

9. The traditional concept of capitalization was indicated by this Court in Rustom Cavasiee Cooper v. Union of India (1970) 3 SCR 430: (AIR 1970 SC 564). It was stated to be :

Capitalization of the net annual profit out of the property at a rate equal in normal cases to the return from gilt-edged securities. Ordinarily value of the property may be determined by capitalizing the net annual value obtainable in the market at the date of the notice of acquisition.

It is thus clear from the above enunciation that the method of determining the value of the property by application of a multiplier to the net annual income or profit should only be adopted when there is no evidence of comparable sales of similar lands in or about the neighbourhood at the relevant time i.e. on the date of the notification under S.4(1) of the Act. In certain circumstances however the Court has no other alternative but to fall back on the capitalized value."

From the abovequoted observations, it becoms apparent that method of determining the value of the property by application of a multiplier to the net annual income or profit should be adopted only when there is no evidence of comparable sales of similar lands in or about the neighbourhood at the relevant time, i.e. on the date of notification under Sec.4(1) of the Act.

11 In the case of Koyappathodi M. Ayisha Umma vs. State of Kerala, AIR 1991 Supreme Court 2027, the Supreme Court has ruled that it is settled law that the method of valuation to be adopted in ascertaining the market value

of the land as on the date of the notification are: (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transaction of the purchase or sale of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. The Supreme Court has also observed that these methods, however, do not preclude the Court from taking any other special circumstances obtained in an appropriate case into consideration because the object being always to arrive as near as possible in an estimate of the market value in arriving at a reasonable correct market value. The Supreme Court therein has ruled that it may be necessary to take even two or all those matters into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. When the Supreme Court said that it may be necessary to take even two or all those matters into account for determination of the market value of the lands acquired, what is meant is that other special circumstances obtaining in an appropriate case can also be taken into consideration and this is quite evident from what has been observed by the Supreme Court in paragraph 6 of the reported judgment, which is as under:

"6. It is thus settled law that in evaluating the market value of the acquired property, namely, land and building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the Court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land. In this case the award of compensation was based on both the value of the land and trees. Accordingly the determination of the compensation of the land as well as the trees is illegal. The High Court laid the law correctly."

12 So far as the present case is concerned, we find that the claimants themselves have relied upon two sale instances produced atExh.124 and 14 for the purpose of determination of the market value of the lands acquired. The State Government has also relied upon three sale instances to enable the Court to determine the market value of the lands acquired as on the date of the Notification under Section 4 of the Act. When the evidence of comparable sales is available, the Reference Court was not justified in resorting to yield method for the purpose of ascertaining the market value of the lands acquired and that too with reference to three cases only. The anomaly which has resulted into is that in three land reference cases, i.e. Land Reference Cases Nos. 59/89, 62/89, and 65/89 the Reference Court has determined compensation payable to the claimants on yield basis and has awarded Rs.54,58,800/-, Rs.27/04,000/-, and Rs.28,92,000/- respectively, whereas in other cases, the claimants have been awarded compensation at the rate of Rs.1125/- per Are. This approach has resulted into grant of lesser amount of compensation to most of the claimants in comparison to the amount awarded to the claimants of those three cases. Page 187, which forms part of additional paper book submitted by the appellants and which is a comparative statement showing the details relating to amounts awarded by the District Court per Are, shows that in Land Reference Case No.59 of 1989 the Reference Court has awarded compensation at the rate of Rs.28,101.93 ps. per Are and at the rate of Rs.7060.11 ps in Land Reference Case No.62 of 1989. The compensation awarded in Land Reference Case No.65 of 1989 is at the rate of Rs.6380.58 ps per Are. This anomaly has resulted because the Reference Court has resorted to yield method for the purpose of awarding compensation in few cases. At this stage, it will not be out of place to notice the direction given by the High Court while remanding the references to the Court for rehearing. In paragraph 6, pertinent observations made by the High Court while remanding the matters are as under:

"6. No doubt, yield basis is one of the methods for arriving at the figure of compensation in absence of sale instances or other permissible method namely expert's opinion. However, to adopt both the methods is clearly not available for which there are two Supreme Court Judgements AIR 1991 SC 2027 and AIR 1988 SC 943."

In view of the direction given by the High Court, the

Reference Court should not have resorted to yield method for the purpose of determining the market value of the acquired lands, when method of evaluating the market value of the lands with reference to sale instances was available. Even if it is asumed for the sake of argument that the Reference Court was justified in resorting to yield method for ascertaining market value of lands in three cases, we are of the opinion that determination of market value of lands on yield basis is erroneous and cannot be accepted. Though the Reference Court has resorted to method of valuation of lands acquired with reference to price of fruits, what was the actual yield is not proved by the claimants and that is not disputed by the learned counsel appearing for the claimants. Witness Vitthalbhai Govindbhai, Exh.23, has categorically admitted in his evidence that there is no evidence to show the yield of trees, nor any record is maintained regarding the expenses, which might have been incurred for getting the yield. In absence of any such reliable data, the Reference Court should not have resorted to the method of evaluating the lands with reference to yield of trees. Moreover, as pointed out by the Supreme Court in the case of Special Land Acquisition Officer, Davangera vs. P. Veerabhadarappa, (supra), certain imponderables should be taken into consideration while resorting to the method of capitalization of actual or immediately prospective profits or rent of a number of years' purchase for the purpose of ascertaining the market value of the lands acquired. It will not be out of context to refer to the caution sounded by the Supreme Court in the said case before resorting to yield method and, therefore, we propose to reproduce the principles laid down by the Supreme Court with regard to adopting of yield method in extenso, which is as under:

"20. In regard to investment in agricultural lands, there are many imponderables inasmuch as the investor runs a much greater risk than the risk that he runs in investment in housing which consists in vagaries of weather and other uncertainties. There is no security of principal no liquidity of investment nor any certainty of income. The appreciation of principal or income is also uncertain. The reason for these is that agricultural lands are not readily transferable under the various land reform legislation e.g laws relating to ceiling on agricultural holdings under the existing State laws and tenancy laws which place restrictions on transfer of such lands with concomitant danger of effacement of the rights of the absentee-land-lords and the creation of rights in the tillers of the soil. In evaluating the rate of return which would ordinarily satisfy an investor in such

a property, the risk factor has further to be evaluated. There may be total or partial failure of crops either through failure of rain or drought or inadequate or excessive rainfall. There may be a failure of crops on account of locust invasion or insects or pests. The cast inputs such as seeds, water, fertilizer, labour charges, etc. would vary from year to year. If the overall cost goes up, the income from agricultural produce would be comparatively less. The fluctuations in price of agricultural produce introduce a great deal of uncertainty in regard to the income that can be expected from the sale of the produce. If the yield of the crop in other producing countries is large or the market prices prevailing in such countries are low the prices of such agricultural produce in India would go down. In view of these considerations, an investor would expect a much higher rate of return so that the risk factor is property discounted.

21. In the premises, when the rate of return on investment was 8.25% in the years 1971 and 1972, a person investing his capital in agricultural lands would ordinarily expect 2% to 3% more than what he could obtain from gilt-edged securities or other forms of safe investment and therefore the proper multiplier to be applied for the purpose of capitalization could not in any event exceed 'ten'. In the present case, the State Government however contends that the proper multiple to be applied should be 12.1/2 in computation of the capitalized value of the lands in these cases having regard to the rate of return of 8% at the relevant time i.e, on the date of the notification under S. 4(1) of the Act. In view of this, it must be held that the multiple of 12.1/2 should be applied in computation of the capitalized value of the lands."

13. A bare reading of the award rendered in the present case makes it abundantly clear that the Reference Court has not taken into consideration the imponderables enumerated by the Supreme Court in the abovereferred to decision before determining the market value of the lands acquired on the basis of yield method. As noted earlier, the evidence of sale instance is adduced on record to enable the Court to determine the market value of the lands acquired. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that the compensation determined by the Reference Court in Land Reference Cases Nos. 55/89, 62/89 and 65/89 on yield basis is erroneous and will have to be set aside accordingly.

14. So far as the sale instances are concerned, the claimants have examined two witnesses, namely, Purshottambhai Devjibhai, at Exh.37, and Mansukhbhai Mohanbhai at Exh.123. The evidence of witness, Purshottambhai Devjibhai, Exh.123, indicates that he had purchased Survey No.339 of village Vadia by registered sale deed on March 27, 1987, at the rate of Rs.1000/- per Bigha, i.e. Rs.988.38 ps per Are. His evidence would show that he was in possession of another part of Survey No.339 and he had purchased the remaining part of Survey No.339 which had gone to the share of his brother in partition. It is also apparent that in part of Survey No.339, which had gone to the share of the brother of this witness, there was a well, and, as the witness was contiguous owner of the land, he had purchased part of Survey No.339 with all advantages attached to it. In cross examination, the witness has admitted that Survey No.339 of which he is the owner is quite near the village and is fertile whereas the acquired lands were at a distance from the village. The evidence of this witness makes it abundantly clear that the part of Survey No.339, which was purchased by the witness, is small in area compared to the acquired lands and as the witness himself was the owner of part of Survey No.339, he had paid a special price to his brother, because it was advantageous to him to purchase the remaining part of Survey No.339 wherein there was a well. It is relevant to note that possession of the land acquired was taken on March 5, 1987 whereas notification under Section 4 of the Act was published on July 9,1987. It means that the sale deed was executed by brother of witness, Purshottambhai after initiation of the proceedings for acquisition of the lands. Having regard to all these attendant circumstances, we are of the opinion that appropriate deduction should be made from the value of the land indicated in Exh.14 before relying upon the same for ascertaining market value of the lands acquired and interest of justice would be served if 15% deduction is made from the value of the land as indicated in Exh.14 for the purpose of ascertaining the market value of the lands acquired in the present case. The price, thus, for the irrigated land would come to Rs.850/per Are.

15. Another witness relied upon by the claimants is Mansukhbhai Mohanbhai. He is the owner of Survey No.238/1. According to this witness, the land bearing Survey No.238/1 situated at village Vadia was purchased by him and his brothers in the year 1979. He has stated that the land purchased is at a distance of 1 k.m. from the dam. The sale deed produced by this witness at

Exh.124 shows that the value of the purchased land was Rs.706.00 per Are in the year 1979. It is true that in the present case notification under Section 4 of the Act was published on July 9, 1987 and, therefore, reasonable rise in price of the lands should be considered while ascertaining the market value of the lands acquired. However, the map produced on record shows that the land bearing survey No.238/1, which was purchased by the witness Mansukhbhai is surrounded by roads. It is on the outskirts of village Vadia and its area is small in comparison to the area of the land acquired. The evidence of this witness would show that the land was of special advantage to the purchasers. Therefore, having regard to these circumstances, appropriate deduction will also have to be made while ascertaining the market value of the lands acquired with reference to sale deed Exh. 124. After considering rise in price of the land at the rate of 10% per year and making deduction at the rate of 45% therefrom, we are of the opinion that the market value of the acquired agricultural lands can be assessed at Rs.850/- per Are.

16 So far as the sale instances relied upon by the State Government are concerned, we notice that witness Chhaganbhai Mohanbhai, Exh.128, had sold Survey Nos.. 347 and 346/2 by a deed dated October 6, 1986. The witness has stated before the Court that the land admeasuring 2 Acre 24 Gunthas of Survey No.347 and land admeasuring 2 Acre 25 Gunthas of Survey No.343/2 were irrigated and non-irrigated lands respectively. The sale deed produced by this witness at Exh.126 shows that the witness had sold lands at the rate of Rs.375.45 ps per Are. Though the witness claimed that he had in fact sold land for a total sum of Rs.90,000/-, he has not produced any cogent evidence on record to substantiate this assertion. The purchaser of the land was not examined and in deed Exh.126 it is not mentioned that the purchaser had paid Rs.90,000/- as consideration to the witness. Therefore, the value of the land cannot be calculated on the basis that the witness had received consideration of Rs.90,000/- but will have to be ascertained on the basis of consideration mentioned in the sale deed which would bring value at Rs.375.45 ps per Are. In cross examination, the witness has admitted that the sale had taken place in the year 1976. This is not challenged on behalf of the appellants and if this is accepted to be true then reasonable rise in price of the land will have to be considered while determining the market value of the lands acquired as on July 9, 1987 which is the date of publication of notification under Section 4 of the Act in the present case. At the same time, this is also a small piece of land compared to the

extent of the lands acquired and, therefore, appropriate deduction will have to be made before placing reliance on this instance for the purpose of ascertaining the market value of the lands acquired. On over all view of the matter, we are of the opinion that this sale instance would indicate that the market value of the acquired land was roughly about Rs.800/-per Are. On behalf of the appellants, witness Dhirujibhai Kurjibhai was examined at Exh.129. The evidence of this witness shows that he had purchased the land bearing survey No.10 admeasuring 2 Acres from Ukkabhai Devji Patel by a deed dated March 25,1983 for a sum of Rs.15,000/-. The deed produced by this witness shows that he had purchased irrigated lands at the rate of Rs.185 per Are. In the present case, notification under Section 4 of the Act was published on July 9,1987 and, therefore, reasonable rise in price will have to be considered while ascertaining the market value of the lands acquired. However, the evidence of this witness shows that after purchase of the land it was levelled by the witness and the witness had incurred expenditure for this purpose at the rate of Rs.5000 to Rs.6000 per Bigha. The witness also admitted that the lands acquired in the present case were better situated than his land and were more fertile. What was claimed by the witness was that, if his uncle had sold the land to a third party, his uncle would have received a higher price of the land but his uncle could not get higher price because he was in need of money and he had to sell the land to him. This piece of land is also small compared to the area of the acquired lands. On totality of the facts and circumstances of the case, we are of the opinion that the market value of the acquired land cannot be assessed more than Rs.800/- per Are in any circumstance.

17. Yet another sale instance relied upon by the Land Acquisition Officer for ascertaining the market value of the lands acquired is sale deed Rxh.134 produced by witness Babubhai Ranchhodbhai. The evidence of this witness indicates that he had purchased land bearing Survey No.43 admeasuring 2 Acre and 36 Guntha by deed dated January 16,1987 from Jairam Jiva for a sum of Rs.24,000/-. Though in examination in chief the witness asserted that his land was at a distance of 1 k.m. from the dam, in cross examination he admitted that his land was at a distance of roughly 7 to 8 k.m from the dam. The price indicated by sale deed Exh.134 is Rs.204 per Are. The witness has categorically admitted that, when he had purchased the land, which was of inferior quality it was not possible for him to raise any crop. The categorical admission made by the witness is that the

lands acquired are better in quality than his land and the acquired lands would have fetched the price of Rs.12000 per bigha in the year 1983. The evidence of this witness makes it clear that his land is surrounded by ravines. Having regard to inferior quality of the land which was purchased by the witness and distance from the dam, we are of the opinion that this sale instance cannot be considered to be comparable instance for the purpose of determining the market value of the lands acquired and, therefore, will have to be ignored from consideration. Thus, on consideration of different sale deeds, we determine the market value of the lands acquired at the rate of Rs.850/- per Are as on the date of publication of notification under Section 4 of the Act.

18. In Kantaben Manibhai Amin and another vs. The Special Land Acquisition Officer, Baroda, AIR 1990 Supreme Court 103, the bagayat land, i.e. irrigated land, was valued at the rate of Rs.8500/- by the High Court. In that case it was not in dispute that bagayat land was superior in quality to jiryat land i.e. non-irrigated land. However,to what extent the irrigated land was superior to non-irrigated land was not established by the claimants. Having regard to the facts of the case, the Supreme Court approved reduction to the extent of 25% for the purpose of determining the market value of the non-irrigated lands. In this case also, it is not established by the claimants as to what extent the irrigated land was superior to non-irrigated land therefore applying formula laid down by the Supreme Court in the abovereferred to case to the present case, we are of the opinion that for the purpose of ascertaining the market value of the jiryat land, i.e. non-irrigated land, deduction to the extent of 25% should be made from the market value determined for the irrigated lands. Accordingly, we hold that the claimants would be entitled to Rs.638/per Are for the non-irrigated lands, which is rounded off to Rs.650/- per Are.

19 It is settled law that in evaluating the market value of the acquired property, namely, land with fruit bearing trees standing thereon, value of both would not constitute one unit, but separate units. It would be open to the Land Acquisition Officer or the Court to assess the land with all its advantages as potential value. However, the tress should be separately valued as timber and thereafter salvage expenses to cut and remove the trees from the land should be deducted. It is relevant to notice that, while remanding the matters to the District Court, the High Court had given opportunity

to the parties to lead evidence, but, admittedly, no evidence was led by the claimants to establish timber value of the trees standing on the acquired lands. As observed by the Supreme Court in several reported decisions, the position of the claimants in the Land Acquisition Reference Cases before the Reference Court is that of the plaintiffs and they have to adduce cogent and reliable evidence to substantiate their claim for higher compensation. In absence of any evidence regarding timber value of the trees standing on the acquired lands, the claimants would not be entitled to receive any compensation as timber value of the trees. However, the State of Gujarat and others have filed Civil Applications Nos. 8277 of 1998 to 8290 of 1998 seeking permission of the Court to lead additional evidence to show the guidelines given to the Land Acquisition Officer for ascertaining timber value of the trees standing on the acquired lands. The learned counsel for the claimants has pleaded that the matters should be remanded to the Reference Court and the claimants should be afforded an opportunity to establish the value of the trees before the Reference Court. As noticed earlier, the matters were once remanded by the High Court and full opportunity was given to the parties to lead evidence to substantiate their respective claims. The claimants did not produce any evidence as to what was the timber value of the trees standing on the acquired lands and, therefore, they would not be entitled to receive any compensation regarding trees. However, in all these Civil Applications, a further affidavit has been filed, with which, Government Resolution of 1993, by which different price for different trees have been fixed, is brought on record. The additional evidence, which is sought to be produced by the State Government and others, will have to be taken on record because for want of evidence the claimants would suffer financial loss and the case for remanding the matters second time is not made out by the claimants. The additional evidence would enable the Court to ascertain the timber value of the trees standing on the lands effectively and, therefore, in order to do substantial justice between the parties, we are of the opinion that the applications seeking permission of the court to produce additional evidence at the appellate stage deserve to be granted. As noted earlier, by filing supporting affidavit, the applicants of the Civil Applications have brought on record the price list of the trees indicated in the Resolution of 1993. Number of trees which were standing on the acquired lands is not in dispute and that is indicated in Exh.29. Therefore, we hold that the claimants would be entitled to the value of trees mentioned in Exh.29 on the basis of Government

Resolution which is brought on record along with supporting affidavit dated November 21, 1998 filed in Civil Applications Nos. 8277 to 8290 of 1998.

20. We notice that in First Appeal No.3386 of 1997 which arises out of Land Reference Case No.64 of 1989, the Reference Court has awarded a sum of Rs.4,03,174/- as compensation at the rate of Rs.1158.95 paise per Are as the lands were irrigated lands, as well as a sum of Rs.8800 as compensation for fruit-bearing trees. In view of our finding that the claimants are entitled to compensation at the rate of Rs.850 per Are, appropriate deductions will have to be made from the compensation determined as payable by the Reference Court to the claimants of Land Reference Case No.64 of 1989. Similarly compensation for fruit-bearing trees also will have to be re-determined on the basis that the claimants are entitled to timber value of the trees standing on the acquired lands at the rate mentioned in Government Resolution of 1993 which is taken on record of the case.

21. For the foregoing reasons, Civil Applications seeking permission to lead additional evidence at the appellate stage are allowed with no order as to costs. All the appeals filed by the State Government are partly allowed with no order as to costs. Civil Applications for stay filed by the State Government are dismissed and Rule is discharged in each application with no order as to costs. The Office is directed to draw decree in terms of this judgment.

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